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NEW DELHI, FRIDAY, MAY 1, 1953

ELECTION COMMISSION, INDIA
NOTIFICATIONS*New Delhi, the 27th April 1953*

S.R.O. 823—WHEREAS the election of Shri Velji Bhil, as a member of the Legislative Assembly of Rajasthan, from the Banswara constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Natwarlal, son of Saligram, Brahman, resident of Banswara, District Banswara;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KOTAH.

CORAM :

Shri P. D. Pandey—*Chairman.*„ J. P. Mathur—*Member.*„ B. S. Darbari—*Member.*

ELECTION PETITION NO. 138 OF 1952

Shri Natwar Lal, son of Saligram, Brahman, resident of Banswara, District Banswara, Rajasthan
State—*Petitioner.*

Versus

1. Shri Bhartendra Singh, son of Abhay Singh, Rajput, resident of Banswara, District Banswara.
2. Shri Velji Bhil, resident of Village Abapara (Khandu), District Banswara—*Respondent.*

JUDGMENT

This is an Election Petition by Shri Natwarlal with the prayers that the elections to the Rajasthan Legislative Assembly from Banswara constituency be declared wholly void, the opposite party No. 2 be unseated and re-elections be ordered.

It appears that the petitioner and both the opposite parties were candidates for the Rajasthan State Assembly from Banswara constituency, in connection with the last general elections. The Petitioner was a Congress candidate and filed his 4 nomination papers on the 24th of November 1951. Along with the Petitioner, there was a dummy Congress candidate named Shri Ram Chandra as also two more candidates out of whom Shri Bhartendra Singh (Respondent No. 1) was an Independent candidate, while Shri Velji Bhil (Respondent No. 2) had stood up as a candidate of the Socialist Party. The nomination papers of the Petitioner and Shri Ram Chandra were rejected but the nomination paper of Shri Bhartendra Singh (Respondent No. 1) was accepted. So far as Shri Velji Bhil (Respondent No. 2) was concerned, his nomination paper was first rejected and then accepted, on reconsideration. It may be noted that the nomination papers of the petitioner and Shri Ram Chandra were rejected by the Returning Officer, on the ground that both of them were assessors for the District of Banswara, and as such, were public servants under Section 21, Clause V of I. P. C. and were also holding offices of profit and were, therefore, not eligible for election.

The nomination papers of the Petitioner and Shri Ram Chandra having been rejected, the result was that the two Respondents alone contested the elections and Respondent No. 2 was ultimately declared elected to the Rajasthan Legislative Assembly.

The Petitioner contends that his own nomination papers were improperly rejected while the nomination paper of Shri Bhartendra Singh was improperly accepted, because, being a Jagi Surpur Jagir, he held an office of profit and was thereby disqualified for being chosen a member of the Legislative Assembly. He further pleads that the act of the Returning Officer first rejecting the nomination paper of Shri Velji Bhiil (Respondent No. 2) and subsequently accepting the same, in the absence of the parties and without giving notice and hearing was both illegal and beyond jurisdiction.

According to the Petitioner, the elections to the Banswara constituency are wholly void and liable to be set-aside, in so far as, they have been materially affected by illegal rejection of the Petitioner's nomination papers as also by illegal acceptance of the nomination papers of the two Respondents.

Respondent No. 1 having remained absent, we have proceeded *ex parte* against him, but Respondent No. 2 has contested the Petition on various grounds. His preliminary objection, as subsequently clarified by means of an application at page 34, was that, inasmuch as, the Chief Justice of this Tribunal has never been a District Judge in this State, he could not be appointed as a member of the Tribunal in view of the provision of Sec. 86, sub-sec 3(a) of the R. P. Act of 1951. This objection has been already disposed of against him, *vide* our order dated 22-1-1953 at page 35 of the record.

The other grounds of objection to the Election Petition as taken up by Respondent No. 2 are that the Petition is defective as it is not signed and verified according to the Code of Civil Procedure and the verification neither includes para. 13 of the Petition nor shows the place where it was signed. And as regards the rejection of the Petitioner's nomination papers and the acceptance of his own and Respondent No. 1's nomination papers he (Respondent No. 2) maintains that the rejection and acceptance have not materially affected the election, because the Petitioner would have forfeited his deposit if had been allowed to contest the seat.

The above pleadings have given rise to the following issues:—

1. Is the Petition bad for want of proper verification or alleged non-disclosure of any cause of action?
2. Was the Petitioner an Assessor of the court of Additional Sessions Judge of Banswara at the time of the rejection of his nomination paper? If so, did he hold an office of profit under the Rajasthan Government and if not, was his nomination paper improperly rejected and did the rejection materially affect the election?
3. Were the nomination papers of Respondents Nos. 1 and 2 improperly accepted, and if so, with what effect on the election?
4. To what reliefs, if any, is the petitioner entitled?

FINDINGS

Issue 1.—All the controversy raised by this issue as regards verification has now been set at rest by the fact that the defects in the original verification of the election petition have been removed by the Petitioner by filing his amendment application at pp. 68 and 69, which has been allowed by the Tribunal as per the order dated 14-4-53 recorded on the order-sheet. It is, therefore, held that the petition is not bad for want of proper verification.

Nor, is the petition bad for the alleged non-disclosure of cause of action, because, para. 11 of the Election Petition clearly discloses the cause of action by stating that the result of the election to Banswara constituency has been materially affected by illegal acceptance of the nomination papers of Respondents 1 and 2 and illegal rejection of Petitioner's own nomination paper.

The whole of issue is accordingly decided against Respondent No. 2.

Issue 2.—This issue gives rise to the following two points:—

(a) Was the Petitioner an Assessor of the court of the Additional Sessions Judge of Banswara at the time of the rejection of his nomination paper, and if so, did he hold an office of profit under the Rajasthan Government, and

(b) Was his nomination paper illegally rejected and did the rejection materially affect the election?

As regards point (a) it may be recalled that on 24-11-51 the Petitioner filed 4 nomination papers *viz.* Exs. V to VIII with different persons as proposers and seconders to each of them. The order Ex. IV of the Returning Officer shows that these papers were rejected on 29-11-51 on the grounds that the Petitioner being an Assessor was a public servant under Sec. 21, clause 5 of the Indian Penal Code, that he got his T.A. and D.A. to attend the court as an assessor and that therefore he held an office of profit.

In regard to the first ground there can be no dispute, for, the Petitioner's own witness Chand-dra Nath (PW2) who is the Reader of the Additional Sessions Judge of Banswara, states the Petitioner had already been appointed as an Assessor on 3-3-51. It has, therefore, to be admitted that

he became a public servant from the date of his appointment as Assessor. But a public servant as defined in Section 21 of the Indian Penal Code has not to be confused with a 'Public Officer' as defined in Sec. 2(17) of the same code.

The second ground as mentioned by the Returning Officer is more or less misconceived, because, although an Assessor gets his T.A. in Rajasthan, he does not get any D. A. but gets only some subsistence allowance which has to be determined by the court concerned and should not in any case exceed Rs. 5/- per day (*vide* Annexure A to this judgment). This subsistence allowance of the maximum paltry sum of Rs. 5/- per diem is only designed to cover the out-of-pocket expenses of an Assessor and therefore he is hardly deemed to be a source of profit to him. We are, therefore, not prepared to hold that the office of an Assessor is at all an office of profit.

Again, even if it be conceded for a moment, for the sake of argument alone that the office of an Assessor is an office of profit, it cannot be said that the present petitioner 'held' any such office on the date of the rejection of his nomination paper i.e. on 29-11-51. The evidence of Chandra Nath (PW2) indicates that although the petitioner had already been appointed on 3-3-51 yet, no intimation of this was conveyed to him and the very first summons that he received for attendance was on 2-2-52 that is, not before but after about 2 months of the rejection of the nomination paper. On 17-2-52 the Petitioner sent his letter Ex. XI asking for exemption and although no specific order of exemption was passed, he was never called up again as an Assessor. All this makes it clear that not having attended the court as an Assessor at any time before the rejection of his nomination paper, he cannot be said to have held the office of an assessor, under the Rajasthan Government.

In connection with point (a) as involved in this issue, it may further be noted that the learned counsel for Respondent No. 2 has drawn our attention to Article 191 (a) of the Constitution of India. The relevant portion of that article reads as follows:—

“A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly... of a State if he holds an office of profit under the Government of India or the Government of any State ...”

The words “office of profit” are not easy to define but they have a definite historical association which is familiar to students of Constitutional history. It appears that the Act of Settlement 12 and 13 William III Chapter II, S. 3 provides that upon the Accession of the House of Brunswick, no person holding any office or place of profit under the King should be capable of serving as a member of the House of Commons. The phrase recurs in the Act of Settlement of 4th Anne and in 6th Anne Chapter 41.

The essential object of all these Acts as well as of our Article 191(a) of the Indian Constitution is to keep the legislatures independent of the executive or to insure, so far as possible, that the members of a Legislative Assembly or Legislative Council of a State should be free from any possibility of influence or the exercise of authority by the executive, or, in other words, free to hold or express their independent opinions and discharge their duties to the electorate without any hope of personal gain or fear of personal loss.

The faithful fulfilment of the above object has in England led to some curious results of which the institution of the Chiltern Hundreds and Manor of Northstead is an acute instance and the more recent decisions in cases relating to Coarbridge and Springburn Divisions which arose after the General Elections of 1945 and in which it was held that even a trivial amount paid for subsistence and travelling expenses to members of tribunals constituted under the control of the Furnished Rent Act 1943 amounts to a profit, are extreme cases which should not be adopted in India.

When we consider the position of an Assessor in India in the light of the aforesaid object, we fail to arrive at any proximate or even remote conclusion that any Assessor attached to a Sessions Court is so much beholden to the Government for his appointment that his independence as a member of the Legislative Assembly is likely to be affected or influenced by the powers that be. In fact, for aught we know, an assessorship in the present times is more a burden than an asset—an irksome office rather than an office of profit.

For the reasons given above, we hold that although the Petitioner had been appointed as an Assessor prior to the rejection of his nomination paper he did not hold an office of profit under the Rajasthan Government.

And, in so far as point (b) as raised in this issue is concerned our decision of point (a) leads to the necessary conclusion that the Petitioner's nomination paper was illegally or improperly rejected.

The further question that now remains to be considered under point (a) is as to whether the rejection of Petitioner's nomination papers has affected the election materially. As this question is somewhat correlated to the question raised by the second portion of issue 3, we shall discuss both the questions together.

Issue 3.—It is an admitted fact that the nomination paper of Respondent No. 1 was accepted. The petitioner had objected to the acceptance on the ground that Respondent No. 1 is a jagirdar, suggesting thereby, that he holds an office of profit as jagirdar. This objection is, however, left unconsidered in view of Petitioner's application (at p. 67) to that effect.

But, so far as the nomination paper of Respondent No. 2 is concerned, the copy of order Ex. III indicates that it was first rejected and then accepted on reconsideration. It has been argued for the Petitioner that when carrying out the scrutiny of nominations, the Returning Officer performs a judicial function, and so, when he passed his first order of rejection in Ex. III, he became *functus officio* and had no power to pass the second order on reconsideration. This argument is supported by Indian Election Cases, Sen and Poddar, page 66 at p. 72, A.I.R. 1953 Patna 47 (c) and I.L.R. Rajasthan p. 47c, and has great force, in so far as, by passing his second order, the Returning Officer virtually and completely reviewed his own order, although, the Election Law does not give him any power of Review. We do not, therefore, hesitate to hold that the second order was both illegal and beyond jurisdiction.

The next question that now requires disposal is as to whether the illegal rejection of petitioner's nomination papers [*vide* point (b) under issue 2] and illegal acceptance of Respondent No. 2's nomination paper have, as questioned by the second portion of issue 3, affected the election materially. We hold that on this question there can be no two opinions. We find it laid down in Amritsar Central (Sikh) Constituency case reported by Sen and Poddar at pp. 15 and 17 that a strong presumption that the result of the election has been materially affected arises from improper rejection of a nomination paper and that, that presumption requires the most conclusive evidence for rebuttal. In another case Anglo-Indian Constituency Punjab (Sen and Poddar p. 66 at page 67) it has been held that the onus is on the respondent to rebut that presumption.

There is, however, a vital difference between improper rejection and improper acceptance of a nomination. In the former case, the entire electorate is deprived of its right to vote for a candidate who was qualified to stand. In the latter case, all the candidates including the unqualified one, usually compete at the polls and the electorate gets an opportunity of voting for a candidate of its choice.

But, what has actually happened in the present case is that in respect of the election, the Petitioner found himself under a treble disadvantage for not only were his own nomination papers rejected but the nomination paper of his rival candidate *viz.* Respondent No. 2 was improperly accepted, and in pursuance of the Congress directive, all the Congress votes were transferred to Respondent No. 2. In other words, if his own nomination had not been rejected, he would have obtained all the Congress or Independent votes that he could have possibly secured and if Respondent No. 2's nomination had also not been improperly accepted, there was reasonable chance for him to get as many votes as he could canvass for out of those which were in the event of the rejection of his nomination, given to Respondent No. 2. This argument not only supports the Petitioner's contention that the improper acceptance of Respondent No. 2's nomination has materially affected the result of the election, but also strengthens the presumption that the improper rejection of Petitioner's nomination papers has deprived the right of the electorate to vote for him.

In order to refute the above presumption, Respondent No. 2 has examined himself and produced six other witnesses. The sum-total of the evidence of these witnesses is that since the Bhils are in a majority in Banswara Constituency and Respondent No. 2 is also a Bhil and a member of the Praja Socialist Party to which many of the Panchas or Sarpanchas of the Grampanchayats belong, the Petitioner could have no chance of success at the election against him. In our opinion, this evidence is as partial as it is opinionative, for, the first of the six witnesses produced by Respondent No. 2 is a mysterious sort of mathematician, who neither knows the exact total population of Banswara Constituency, nor, the total number of Bhils living therein, but has yet been able to calculate that the Bhils number 75%. The next three witnesses are Bhils and so is Respondent No. 2, the 5th witness is Respondent No. 2 himself and the sixth one is reasons to be partial to Respondent No. 2, because, he has admittedly helped him in regard to his nomination.

But, the Petitioner himself having admitted that the Bhils in Banswara constituency should number about 50%, we have to concede their strength to that extent. But, in view of the special circumstances of the case and even after making due allowance for possible primitive instincts of communal partiality amongst the Bhils, we find it difficult to hold that all of them should have voted *en bloc* for Respondent No. 2 alone and that none of them should have voted for the Petitioner, who was a Minister for Revenue and Health under the former Banswara State Government (*vide* PW 3) and who had been nominated (*vide* PW 4) by the Congress which had been running Gandhi Ashrams at Pratapgarh and Kushalgarh as also a Seva Sangh and had been working in Banswara Constituency for the last 15 or 20 years (*vide* RW 1). According to Respondent No. 2's own admission, at least in six of the Grampanchayats out of seventeen, the Sarpanchas are Congressmen and we have it from Hiteshi Lal (RW 1) himself that in the Banswara Municipal elections which took place about one year before the general elections, 14 out of 15 seats were captured by the Congress candidates. All this signifies that the Congress also exercises some appreciable influence in Banswara Constituency.

The suggestion that since Respondent No. 2 is a Bhil, the majority of the Bhils should have voted for him, is further weakened by the admissions of Respondent himself and his witness Moghji Bhil (RW 3) that the Respondent had not asked for votes from the Bhils on the ground

that he himself was Bhil. This weakness is, in its turn, enhanced by the statement on oath of the Petitioner that after his nomination as a Congress candidate was rejected, the Congress Party lent their votes to Respondent Belji Bhil and in pursuance of the Congress policy, he himself voted for the said Respondent.

In view of the facts and evidence discussed above, we have come to the conclusion that Respondent No. 2 has completely failed to refute the presumption that the rejection of the Petitioner's nomination papers has materially affected the election and that the illegal acceptance of Respondent No. 2's nomination paper had further handicapped the petitioner both by losing his Congress votes as also some other votes which should have possibly gone to him if Respondent No. 2 had not been nominated. We decide point (b) relating to issue 2 and the last portion of issue 3 pertaining to Respondent No. 2 in favour of the petitioner.

Issue 4.—In face of our findings on the first 3 issues, and relying on section 98 (d) of the R.P. Act of 1951, we hold that the petitioner is entitled to the relief that the election be declared to be wholly void.

ORDERED

That the petition be allowed and it be declared that the general election of 1952 to the Rajasthan Legislative Assembly from the Banswara Constituency is wholly void.

Considering that the election has been upset not on account of any fault of Respondent No. 2 but owing to the views of the Returning Officer which have turned out to be erroneous, we leave the parties to their own costs.

KOTAH ;
The 23rd April 1953.

(Sd.) P. D. PANDR, *Chairman.*

(Sd.) J. P. MATHUR, *Member.*

(Sd.) B. S. DARBARI, *Member.*

ANNEXURE 'A'

GOVERNMENT OF RAJASTHAN

JUDICIAL DEPARTMENT

NOTIFICATION

Jaipur, dated the 21st August, 1951.

No.F.2(4) Jud 50.—In pursuance of Chapter XXIII of the Code of the Criminal Procedure, 1898, the Government of Rajasthan is pleased to make sub-joined rules in respect of journey to attend a Court of Law as an Assessor or Juror in Rajasthan.

By order of

His Highness the Raj Pramukh,

ANOP SINGH,

Secretary to the Government.

Rules relating to Journey to Attend the Court of Law as Assessor or Juror

Travelling expenses.—Every person who attends in obedience to a summons issued under Chapter XXIII of the Code of Criminal Procedure in order to serve as a Juror or Assessor at a trial :—

(a) Before the High Court ;

(b) Before any court of Sessions ;

shall be entitled to his *bona fide* travelling expenses, if his place of residence be not less than five miles distant from the Court which he attends. Such travelling expenses shall not exceed the Railway fare to and from the Court when the person summoned can perform the journey by rail.

NOTE.—Government servants are entitled to travelling allowance as on tour in accordance with the Rajasthan Travelling Allowance Rules for the time being in force.

2. Subsistence Allowance.—Every person summoned as a Juror or Assessor shall be entitled to subsistence allowance for each day's necessary absence from his residence and attendance at Court, such subsistence allowance not to exceed rupees five per diem.

NOTE.—No subsistence allowance shall be paid to a Government servant acting as a Juror or Assessor.

3. *Trial Court to fix expense certificate of Expenses actually incurred.*—In every case in which a non-official person is summoned as a Juror or Assessor, the court at which his attendance is required shall, if he is entitled to travelling allowance under rule 1, determine the class by rail (with due regard to such person's position in life to make use of; or in the event of his being unable to travel by rail, the bonafide travelling expenses which he has incurred in coming to Court and must incur on his journey homewards, and shall also determine the rate per diem at which subsistence allowance is to be granted under rule 2.

Certificate to be furnished by a Juror or Assessor before payment of expenses

I hereby certify that the travelling expenses bonafide incurred by me in attending this court as a Juror/Assessor in obedience to a summons (my place of residence being not less than..... miles distant) as noted below, viz. :—

	Coming	Returning	Total
<i>Railway fare carriage hire</i>
	Coming	Returning	Total

TOTAL

Dated, the.....

Expenses of Assessors attending before Sessions courts.—The same procedure shall be allowed for the payment of the expenses of Assessors in trial before courts of Sessions as has been laid down for the payment of road and diet money to witnesses.

[No. 19/138/52-Elec.III/57457]

S.R.O. 824.—WHEREAS the election of Shri Chinnayya of Annavasal, Kulathur Taluk and Shri Palaniappan of Rayavaram, Thirumayam Taluk, Tiruchirappalli District as members of the Legislative Assembly of Madras, from the Thirumayam constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Rajagopala Pandarathar, Kallakottai Palace, Puddukottai, Tiruchirappalli District, Madras State;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, TIRUCHIRAPPALLI

(In the matter of the petition presented by Sri Rajagopala Pandarathar questioning the Election of Sri Palaniappan as a member of the Legislative Assembly of the Madras State from the Thirumayam Double member Constituency—Tiruchirappalli District.

PRESENT:—Sri H. Ananthanarayana Ayyar, I.C.S.—*Chairman.*

(1) Sri L. S. Parthasarathy Ayyar, B.A., B.L.,

(2) Sri V. C. Viraraghavan, B.A., B.L.—*Members.*

Friday, the 17th day of April, 1953.

ELECTION PETITION NO. 163 OF 1952.

BETWEEN

Rajagopala Pandarathar, Zamindar of Gandarvakottah, Tanjore District now residing at Kallakottai Palace, Pudukkottai, Tiruchirappalli District.—*Petitioner.*

AND

1. Andiappan Ambalam residing at Virachilai, Tirumayam Taluk, Tiruchirappalli District.

2. Chinnayya residing at Annavasal, Kulathur Taluk.

3. Palaniappan, residing at Rayavaram, Tirumayam Taluk, Tiruchirappalli District.

4. Sambasiva Mooppan residing at Venganur, Tiruchirappalli District.

5. Sivaswami Rangiar residing at Marudampatti village, Kulathur post, Tiruchirappalli Taluk.—*Respondants.*

This election petition having been heard on the 11th, 14th, 24th and 25th days of March, 1953, and on the 6th, 7th, 10th, 15th and 16th days of April, 1953 in the presence of Sri P. Subbiah advocate for petitioner upto 1-4-1953, of Sri G. Subbiah Thevar, advocate from 6-4-1953 to 14-4-53,

and the petitioner who appeared in person on the 14th and 15th, not appearing either in person or by pleader on the 16th, and of Sri G. S. Ramachandra Sastri, advocate for 2nd respondent and of Sri K. Nagaraja Ayyar, advocate for the 3rd respondent and the respondents 1, 4 and 5 not appearing either in person or by pleader and the petition having stood over to this day for consideration the Tribunal passed the following.

ORDER

An election to the Madras State Legislative Assembly was held on 16-1-1952 from the Thirumayam Constituency Tiruchirappalli District (a two member constituency), with the following results:—

	Party	Number of votes secured
Petitioner		13178
1st Respondent		35769
2nd respondent		31562
3rd respondent		37692
4th respondent		28579
5th respondent		6546

The Returning Officer declared 3rd respondent as elected to the General Seat and 2nd respondent as elected to the Reserved Seat.

Petitioner feels aggrieved and has filed this petition for a declaration:—

- (a) that the election in the Thirumayam Constituency Pudukottai is wholly void;
- (b) that, in any event, the election of the returned candidate is void; and
- (c) for incidental reliefs.

2. The contentions in the petition are to the following effect:—

(I) The election has not been a free and fair one. Bribery, corruption and undue influence prevailed extensively. In the Varpattu polling station No. 203, there were irregularities and non-observance of law and rules by the Officers. Owing to the confusion created, a re-election was ordered, but the re-election was held only in one booth (Booth No. 2 in Polling Station No. 203).

(II) In procuring the votes, the returned candidate and his agents committed the following corrupt and illegal practices.

- (a) inducing or attempting to induce many candidates to refrain from and withdraw from the election contest;
- (b) feeding the voters in hotels, coffee-houses and tea stalls on a wide scale in several areas;
- (c) bringing undue influence to bear upon the electorate by threats and promises;
- (d) procuring motor vehicles for transport of voters in several areas;
- (e) removing ballot papers from polling stations through voters and purchasing them outside the polling stations for depositing into returned candidates' boxes;
- (f) making propaganda on a communal basis and systematic appeal to caste, community and religion, using religious and communal symbols in the ballot boxes;
- (g) incurring unauthorised expenditure and spending greater amount than what is duly sanctioned under the law;
- (h) soliciting votes at all the polling stations and booths on the date of actual polling.

(III) There was wholesale violation of the provisions of the Act and rules on the part of the authorities and officers.

- (a) Polling agents of the petitioner in several booths were refused admission into the booths during polling, whereas the returned candidate and his agents and party men had free access;
- (b) the returned candidates agents alone were permitted to affix their seals on the ballot boxes, while the petitioner's agents were denied that right. In some instances, boxes were sealed by the returned candidate even at the commencement of the poll and he was permitted to affix his seal in addition to the Government seal;
- (c) the polling officers and presiding officers did not properly and securely seal the boxes of the petitioner and of the returned candidate, such boxes of the returned candidate alone (and not of petitioner) were sealed after wrapping with cloth;

- (d) the room in which the ballot boxes were stored prior to the counting was not properly safeguarded. The returned candidate and several other persons belonging to his party were found at all times in the room wherein the boxes were stored. The conduct of the Clerk in charge of the room was found suspicious and the Returning Officer has not enquired into his conduct;
 - (e) there was wholesale tampering of ballot boxes in several instances. The ballot boxes did not bear Government seals in several cases. The paper seals in the boxes were found missing or tampered with in several cases. Wax seals also were found missing and tampered with in many instances.
 - (f) the counting was done in a slipshod and chaotic manner and created confusion. The ballot papers of one booth were found in the boxes of different booths. The Returning Officer did not stop the counting and make enquiries.
3. Though the allegations in the petition disclosed many corrupt practices under several clauses of Sections 123 and 124, only 5 specific items were set forth in the list of particulars accompanying the petition as having been committed by the returned candidate and his agents. It was also not a full statement.
4. Respondents 2 and 3 filed separate counter statements categorically denying therein the several statements of fact made in the petition which they characterised as either incorrect, false or false. They also contended as follows:—

The expression "returned candidate (which is in the singular) and his agents" is vague and misleading. It is not clearly alleged as to which of the two returned candidates was guilty of corrupt and illegal practices. Each of the candidates was his own election agent. All the candidates who were duly nominated to the election were not impleaded in the petition, and the petition is, therefore, bad under Section 82 of the Representation of the People Act. Beyond vague and general statements, full particulars of the corrupt and illegal practices were not given in the petition or even in the list and the petition has to be rejected *in limine*.

5. As there was not as full a statement as possible in regard to the particulars given in the list; with a view to making a fair and effectual trial of the petition, the petitioner was directed to give further and better particulars in respect of the 5 items mentioned by him in the list. Under the guise of giving particulars, the petitioner included in his memo of further particulars dated 23-9-1952, fresh instances of corrupt practices, some of which were not even referred to in the petition itself, e.g., soliciting support of village Munsifs and other village officers for the purpose of securing votes; meetings and propaganda addressed by the candidate and his supporters making untrue statements regarding the petitioner. As the amendment to the list (by addition of fresh instances) could not be allowed, the memo was limited by us only to particulars relating to feeding of voters in Viralimalai; and providing buses and cars for transport of voters to and from the Annavasal polling station (*vide* order, dated 11-10-1952).

The other respondents did not file any counter statements.

6. The following issues were framed—

- (i) Is the petition not maintainable for non-compliance with the provisions of Section 82 of the Act XLIII of 1951 as alleged in para. 2 of the written statement of the 2nd respondent and in para. 19 of the 3rd respondent's written statement?
- (ii) Has there been extensive bribery and corruption as alleged in para 6 of the petition?
- (iii) Has there been any confusion in the polling of votes in the polling station No. 203 Varpet Division as alleged in para. 7 of the petition and has the same materially affected the result of the election?
- (iv) Whether there was tampering of the ballot boxes as alleged in paras. 8 and 9 of the petition, and, if so, whether the result of the election has been materially affected on account of non-compliance with rules relating to election?
- (v) Whether religious and communal marks or symbols were used on the ballot boxes as alleged in para. 15 of the petition, for the furtherance of the prospects of the 3rd respondent's election, and, if so, were they used by the 2nd respondent or with his knowledge or connivance, and, if any case, whether the result of the election has been materially affected thereby?
- (vi) Has the petitioner been materially affected due to the various irregularities by the officers in the sealing and safeguarding of the ballot boxes and due to non-compliance with the provisions of Act XLIII of 1951 and the rules thereunder and the preferences shown in favour of 3rd respondent and his agents as alleged in paras 10 and 11 of the petition?

- (vii) Were motor vehicles provided by the returned candidates or their agents for the transport of voters to and from the polling stations as specified in items 1 and 2 of the list to the petition?
- (viii) Are the returned candidates guilty of treating?
- (ix) Whether the 3rd respondent or his agent committed the corrupt practice of supplying food and drinks to the voters at, in and about polling booths as alleged in item 2 (of list) and item 7 of the memo. of particulars?
- (x) Has there been any irregularity or illegality in the counting of votes and has the result of the election been materially affected thereby?
- (xi) To what reliefs is the petitioner entitled?

7. Before dealing with the evidence on the issues, it may be relevant and necessary to set out certain facts relating to the conduct of the case by the petitioner. Issues were framed on 11-10-1952; time was granted for filing documents and list of witnesses till 10-11-1952; and the case was posted for trial to 7-1-1953. On the date of trial, the petitioner and his pleader were not present. The pleader who appeared for the petitioner's pleader filed an adjournment petition and the case was thereupon posted to 28-1-1953. On that date, another pleader for the petitioner's lawyer wanted an adjournment. The trial of the case was adjourned to 24-2-1953. On the adjourned date, the petitioner was not ready, nor had he taken any steps to summon his witnesses. He wanted an adjournment which was granted till 10-3-1953. On the latter date again, the petitioner wanted an adjournment. His pleaders of Madras and Pudukkottai were also absent. The case was adjourned to 11-3-1953.

8. Another pleader (Mr. P. Subbiah of Tiruchirappalli) entered appearance (on 11-3-1953) and 3 witnesses were examined. As no other witnesses of his were present, the petitioner took adjournment till 14-3-1953. On that date, Mr. C. S. Krishnamoorthy (Returning Officer) who had come from Madras was examined as P.W. 4 and the case was adjourned to 20-3-1953. As no other witnesses were present, the petitioner took further time till 24-3-1953. On that day, he examined 3 witnesses and wanted time till 25-3-1953 for further evidence as he had no more witnesses. On 25-3-1953, he examined one witness and stated that he had no other witness available that day and could not bring any other witness till 1-4-1953 and wanted adjournment till that date. The case was adjourned till the 28th. Petitioner stated that he had no witnesses to be examined that day and he took time till 1-4-1953. On that day, petitioner did not appear. His pleader reported no instructions. One Krishna Raju turned up and gave a statement that the petitioner took ill on his way to Tiruchirappalli and could not come. The case was therefore adjourned to the 2nd. On this date again, the petitioner was not present. No pleader appeared for him. But a telegram was received asking for adjournment as a last chance for two days at least. Time was given to him till 6-4-1953 as a last chance.

9. On 6-4-1953, another pleader (Mr. G. Subbiah Thevar of Tiruchirappalli) entered appearance for petitioner and examined 3 witnesses. The case was adjourned to 7-4-1953 for further evidence. On that date, P.W. 12 was examined in chief and except for marking some documents (official proceedings) for which the respondents' pleaders had no objection, the chief examination was finished. Petitioner again took time to get his witnesses as a last chance. On 10-4-1953 when the case was taken up, the petitioner was absent. The part-heard witness P.W. 12 was also absent. The petitioner's pleader wanted time till 3 P.M. for the witness and petitioner to turn up. Even till 3-45 P.M. neither the petitioner nor P.W. 12 turned up and the petitioner's pleader applied for further adjournment. He stated that he had no further documents to mark. The advocates of respondents 2 and 3 who were present on all the dates of the hearing and who were opposing the adjournment every time, strongly opposed any further adjournment, this time. Adjournment was refused. The 3rd respondent led his evidence examining himself as R.W. 1. After he was examined-in-chief, the petitioner's pleader wanted time till the next day to cross-examine him. On the adjourned date, the petitioner's pleader wanted permission to reopen the case and to allow him to examine his witnesses. We were inclined to examine the witnesses (of petitioner) who were present and directed him to file a formal petition therefor. After an hour, the petitioner's pleader turned up and represented that he was not filing any petition for re-opening the case, and that his client wanted to take the matter to the High Court. Forthwith he reported no instructions.

10. The petitioner then presented a petition for adjournment applying for a copy of the order refusing to grant an adjournment. Copy of the order was ordered to be given. The petitioner wanted time for cross-examination of R.W. 1. The case was adjourned to 15-4-1953 to enable him to cross-examine R.W. 1. On that day he again wanted time till the 17th as a last chance to enable him to cross-examine R.W. 1. We adjourned the case to 16th. When the case was taken up on 16-4-1953, petitioner was absent. No pleader appeared for him. The respondents' pleaders closed their evidence and addressed arguments.

11. *Issue 3.*—No evidence has been adduced on this issue. Petitioner has not proved his case concerned in this issue.

12. *Issues 2, 8, and 9.*—Though in the list of particulars accompanying the petition, it was alleged that the supply of food and drinks to voters was in tea clubs and feeding centres in Viralimalai, in the memo. of further particulars the supply was limited to one hotel and one tea club. In the evidence the feeding was confined only to one tea club (that of P.W. 5). The evidence in regard to this is that of P.Ws. 5, 6 and 7. P.W. 5, the tea shop keeper, says as follows:—

On the election day, a boy Appavu brought to him about 20 chits saying that the Village Munsif and Pappathi ammal had sent the chits with directions that meals should be given to voters who would turn up later. He fed the 20 people brought by the boy with the chits; later some 15 persons came each with a chit. He fed them also. The 35 people whom he fed for the chits did not pay any money for their food.

13. The chits are not produced by P.W. 5, his explanation being that the Village Munsif came next morning, paid him the money and took away the chits. He keeps accounts which are also checked by the officers. But he admits that the receipt of the money for the feeding will not appear in his accounts. He does not know the names of the persons who came and took food and it is the boy who brought the chits that told him that they had come to Viralimalai to vote. He has therefore no personal knowledge as to whether they were voters or not. He admits he never told the petitioner the fact of his feeding the persons on chits.

14. The evidence of P.W. 6 is practically to the same effect. He is a neighbouring box-stall keeper. He says that the boy Appavu brought about 10 or 30 chits bringing some persons with him and told R.W. 5 that the Village Munsif and Pappathi ammal gave the chits to him with directions that he should feed to the extent of 6 annas, each person who voted in the bull-box for Congress. Curiously enough, he was staying near the till of P.W. 5 until all the 35 people were fed. He does not know the names of the persons fed as they belonged to other villages.

15. P.W. 7 says that while he was present in the drapery store of Pappathi ammal in the building of the village Munsif, he saw the village Munsif and Pappathi ammal hand over some chits to Appavu and ask him to give those chits to P.W. 5's shop and to Periamann's shop directing them to feed the persons who were present in the drapery shop, that those persons went to P.W. 5's shop and took food, and returned to drapery shop and then went to the booth to vote. He admits he went to the Pappathi ammal's store only casually and had no business there. Though he stated in chief-examination that the Village Munsif and Pappathi Ammal worked for the 3rd respondent in the election, in cross-examination he admitted that he did not know who worked for any party. He would add in re-examination that the Village Munsif and Pappathi Ammal worked for the 3rd respondent. What is meant by "*working for the 3rd respondent*" is not explained.

16. There is discrepancy in the evidence of P. Ws. 5, 6 and 7. These are worthless witnesses. The evidence of P.W. 7 does not show that persons who were fed were voters. Even if the feeding was true, there is no reliable evidence to show that the persons fed were voters, and that the Village Munsif and Pappathi Ammal were any sort of agents for the petitioner, and, whether the 3rd respondent had any connection with the feeding. R.W. 1 swears that he did not make any arrangements to feed any voters of Viralimalai, that neither the village Munsif nor Pappathi Ammal worked for him in the election and that he had given strict instructions to his workers that no voter should be fed or treated and that those instructions were observed in all the polling stations. We find, disbelieving the evidence of P.Ws. 5, 6 and 7 and believing the evidence of R.W. 1 (who was not cross-examined), that no extensive bribery or corruption as alleged in Para. 6 of the petition is proved, that the returned candidates are not guilty of treating, that the 3rd respondent and his agents did not commit the corrupt practices of supplying food and drinks to voters at any polling booths as alleged in the petitioner's list and memo. We find the issues accordingly against petitioner.

17. *Issue 7.*—While it is alleged in the list that there was provision of buses and cars for transport of voters to and from polling stations, in the memo. of particulars only one car of C.V.C.T. Annavasal, is mentioned. In the evidence of P.Ws. 2, 3 and 9 which relates to this issue, there is no reference specifically to C.V.C.T., but a hired car of Kanadukathan Chettiar is mentioned. Who the Kanadukathan Chettiar is, is not disclosed. Nor has the driver, of the car been examined.

18. P.W. 2, who was the polling agent of the petitioner, says as follows:—

On election day, at about 4 P.M., some persons were brought in a car to the gosha polling booths. After voting and before he could go to them, the car went away. Ten minutes later the same car brought another load of 4 voters. P.W. 2 detained them and complained to the Police. The Police took away the car with its driver recorded statements and made an enquiry.

19. P.W. 2 says that he only *learns* that it was a hired car of Kanadukathan Chettiar. He does not know the name of the Chettiar or the owner of the car or the number of the car or the name of the driver. Khaoor Sahib who is said to have worked for the Congress and who brought the gosha women in the car is not examined and his name was not mentioned by P.W. 2 to the petitioner. He has no land and was doing work for the petitioner at the election at Rs. 1-8-0 per day.

20. P.W. 3 says that P.W. 2 told him that Congress people had brought Muslim women in a car and that he went with P.W. 2 to the Police Station where the driver told the Head Constable that the car belonged to a Chettiar of Kanadukathan. The Head Constable (P.W. 9) recorded statements. Beyond what P.W. 2 told him, he does not know as to whom the car belonged. Curiously enough, while P.W. 2 would say that the Congress car was working for Congress at Annavasal for 4 or 5 days, the driver is reported to have stated to the Police that the car had come only the previous night. Also P.W. 3, who belongs to Annavasal, did not see the car in the morning on the election day. P.W. 9 made the entry Ex. A8(a) as the result of his enquiry. It shows that Khader Sahib told the Police that he had brought the ladies to the hospital and not to the polling booth to vote.

21. There is no reliable evidence to connect the 3rd respondent or any of his men with procuring any vehicles to take voters to the polling station. R.W. 1 has sworn that neither he nor any of his agents or workers sent or procured any car for transport of voters at Annavasal, that he had no agent or worker called Khader Sahib at Annavasal, that he had instructed his agents that no voter should be transported in any vehicle to vote and that his instructions were observed in all polling stations. R.W. 1 has not been cross-examined. We find, disbelieving the evidence of P.Ws. 2 and 3, and believing the evidence of R.W. 1 that it is not proved that motor vehicles were provided by the returned candidates or their agents for the transport of voters to and from the polling stations as alleged in the list and memo.

22. Issues 4, 5, 6 and 10.—No direct evidence has been let in as to what took place in any particular polling station in respect of the matters relating to these issues. But evidence has been let in as to what happened and what was discovered at the place of counting, viz., in the Thirumayam Taluk Office. The witnesses examined in this respect are the following :—

P.W. 4 (Returning Officer and Sub-Collector, Pudukottai).

P.W. 1 (Assistant Returning Officer and Tahsildar).

P.W. 8. (Upper division clerk in charge of the election work in Tirumayam Taluk).

P.W. 11 (2nd respondent).

P.W. 12 (the counting agent of the 2nd respondent).

Of these witnesses, the only one who supports the allegations in the petition is P.W. 12. He was not produced for cross-examination by the respondents. Consequently, his evidence in chief examination is not entitled to any weight. Further, his evidence that lots of irregularities were detected in the matter of ballot boxes is directly contradicted not only by the official witnesses P.Ws. 1, 4 and 8 but also by P.W. 11 who is the 2nd respondent himself whose counting agent he (P.W. 12) was. It appears from the evidence that P.W. 12 was putting in a large number of petitions from 25th January 1952 to the Returning Officer P.W. 4 and that the latter passed orders on them and proceeded with the counting. The evidence shows that the ballot boxes were carefully stored in two rooms close to the counting hall (which was a thatched shed erected for the purpose) and that what defects were noticed were trivial, and could be properly explained.

23. In the petition there is a long catalogue of irregularities alleged to have been committed by the election officers, both at the polling and at the counting. The irregularities that were put forward in the evidence are as follows :—

Alwyn papers were not visible in some boxes, the seals were found broken in some, the gate of one box was in broken condition, the threads were broken, there were kunkumum and turmeric in two or three boxes which bore the symbol of bulls, there were no impressions on some of the seals, the clerk Arunachalam was suspected of having tampered with the ballot boxes and was found to have some threads and wax with him when the counting began. The evidence of P.Ws. 1, 4 and 8 gives the lie direct to the allegations of irregularities put forward in the evidence and not even spoken to by the petitioner or any of his witnesses. The evidence shows that the Tahsildar was most of the time with him in the ballot-box storage room at and before the time of the counting and that when the Returning Officer came with Kamakrishnan (P.W. 12 who made the complaint) and the Assistant Returning Officer and others into the storage room to check, he (P.W. 8) had some thread in his hand and placed it on the table. The thread which he kept was the thread which had been supplied by the Government for election purposes.

24. P.W. 1 the Assistant Returning Officer says as follows :—

He was present with the Returning Officer when he inspected the storage room in the company of the candidates and their agents and counting agents. The Clerk was bringing boxes from the room to his table in the counting hall. He showed the seals on each box to the candidates, their agents and counting agents and opened the boxes after getting permission of the Returning Officer. The seals in all the boxes were intact. In one or two boxes, the Alwyn paper seal had fallen into the box. In most of the boxes, the Alwyn seal paper was visible on the top and in normal condition. In not a single case was the slit of the box broken. In all cases, the seals were in position. The room was carefully guarded by the armed Police according to the rules. The candidates, their agents and counting agents, in all numbering about 50, were present at the time of counting. No ballot box had been tampered with.

25. The Returning Officer (P.W. 4) states as follows :—

The Alwyn seal could get damaged even in transit and not only by the ballot box being opened. Except in two or three cases the imprint on the seal was visible clearly. The slit was not open in a single case. When he inspected the storage room in the presence of the Assistant Returning Officer the candidates and their agents, P.W. 8 had only thread M.Os. 1 and 2 in his hand. He put it in the cover Ex A2. M.O. 1 is Government-supply-thread. M.O. 2 is thread which he purchased from the market. It was the duty of P.W. 8 to supply thread like M.Os. 1 and 2 to the counting staff for bundling up the papers. Neither of the threads (M.Os. 1 and 2) was used-up thread. In some of the boxes, there was sandal paste and turmeric. They cannot be said to have been found on the boxes of Congress candidates alone. Some parliamentary ballot papers were found mixed with Assembly ballot papers, but they were treated as invalid and kept by him separately as per the rules. No objections were raised to the counting either on the 23rd when the counting began, or on the 24th by which time the counting of votes of respondents 1, 2 and 3 was finished. Only on 25th January 1952 when he was counting the votes for the petitioner, did objections begin to come in. He passed orders, on the objections given by Ramakrishnan P.W. 12, that there was no reason to stop the counting or to search the pockets of Arunachalam (P.W. 8). Even among ballot boxes whose contents were counted on 23rd January 1952 and 24th January 1952, there were many in which Alwyn paper seals had fallen in and no objections had been raised about them on those days. It was practically impossible for Arunachalam Mudaliar to tamper with the boxes with so many officers and other people about and he had no grounds to suspect Arunachalam of tampering with the boxes. The counting was done according to the rules and there was no contravention of any of the rules.

26. P.W. 11 whose counting agent was Ramakrishnan swears that he cannot read and understand English, that his agent Ramakrishnan (P.W. 12) was putting in petitions to the Returning Officer and took his signature on the petition Ex. A4 stating that there should be at least one petition with his (P.W. 11's) signature. He does not know who wrote the body of Ex. A4 and says that he cannot read and understand Ex. A4. He further stated that the Sub-Collector and others conducted the counting and that everything was done properly in the counting.

27. There is nothing to show that kunkumum and turmeric were found only in the Congress boxes and not on others. Even if it was found, it does not offend any of the provisions of the Act. For, what Section 124 (5) prohibits is the use of religious and national symbols for the furtherance of the prospects of a candidate's election. Kunkumum and turmeric paste cannot be said to be a religious or national symbol. Further, when all the candidates were Hindus, there is no point in this matter at all.

28. The petitioner who, in his verification to the petition, has stated that the allegations are true to his knowledge and belief has not chosen to go into the box to speak to the various irregularities alleged to have been committed by responsible officers, nor would he put Ramakrishnan into the box after his chief-examination for being cross-examined. We hold that the provisions of the Act and rules were complied with and that there had been no tampering or any irregularity either at the polling or at the counting. Accordingly we find the issues 4, 5, 6 and 10 against petitioner.

29. *Issue 1.*—We find that there has been substantial compliance with the provisions of Section 83 of the Act. It appears from the evidence that P.W. 3 was a duly nominated candidate. But he has not been impleaded as a respondent. To this extent, there is non-compliance with provisions of Section 82 of the Representation of People Act. This is a technical defect. But, even apart from this, the petition fails on other issues on the merits.

30. *Issue 11.*—In view of our findings on the other issues, we find that the petitioner is not entitled to any of the reliefs he has prayed for.

31. We have to observe that petitioner has made various allegations of a serious nature against responsible officers but has not substantiated them.

32. Under Section 98 (a) of the Representation of the People Act, we dismiss the election petition. Under Section 99 (1) (b) of the Act, we fix the total amount of costs payable by petitioner to the 2nd respondent at Rs. 150 and to the 3rd respondent at Rs. 250.

Pronounced in open Court, this the 17th day of April 1953.

(Sd.) H. ANANTHANARAYANA AYYAR, *Chairman.*

(Sd.) L. S. PARTHA SARATHY AYYAR, *Member.*

(Sd.) V. C. VIRABAGHAVAN, *Member.*

*The following exhibits were filed :—***FOR PETITIONER :**

- A-1 Rough sketch of the rooms in Tirumayam Taluk Office where the ballot boxes were stored
- A-2 Cover in which the Threads M. Os. 1 and 2 were put in and sealed by Returning Officer.
- A-3/25-1-52 Objection petition presented by Ramakrishnan (P.W. 12) counting agent of 2nd respondent to the Returning Officer (P.W. 4).
- A-3(a)/25-1-52 Orders passed on Exhibit A-3 by the Returning Officer (P.W. 4)
- A-4/25-1-52 Objection petition presented by P.W. 11 (2nd respondent) to the Returning Officer (P.W. 4) asking to stop counting.
- A-4(a)/25-1-52 Orders passed by Returning Officer (P.W. 4)
- A-5/25-1-52 Objection petition presented by Petitioner to the Returning Officer (P.W. 4).
- A-5(a)/25-1-52 Orders passed by Returning Officer on Exhibit A-5
- A-6/ Form No. 15 showing record of rejected votes.
- A-7/ Form No. 15 showing record of rejected votes
- A-8/ General Diary of Annavasal Police Station for 16th January 1952 - page 35.
- A-8(a)/17-1-52 Notes made in the margin by P.W. 9.

FOR RESPONDENT:—Nil.*The following witnesses were examined :—***FOR PETITIONER :**

1. Sri C. P. Srinivasa Rao (Assistant Returning Officer,
2. Sri Syed Ibrahim
3. Sri Arumugam Chettiar
4. Sri C. S. Krishnamurthi (Returning Officer),
5. Sri Ponniah.
6. Sri Natarajan.
7. Sri C. Subbiah.
8. Sri Arunachala Mudaliar.
9. Sri Vasudevan (Head Constable No. 1093)
10. Sri Subbiah.
11. Sri Chinniah, M.L.A. (2nd Respondent).
12. Sri Ramakrishnan

FOR RESPONDENT :

1. Sri Palaniappan (3rd Respondent)

Material Objects Filed

1. Thread.
2. Thread.

(Sd.) H. ANANTHANARAYANA AYYAR, *Chairman.*(Sd.) L. S. PARTHASARATHY AYYAR, *Member.*(Sd.) V. C. VIRARAGHAVAN, *Member*

[No. 19/163/52-Elec. III/5791.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

